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THE NEW REAL ESTATE LICENSE LAW

By H. BEMIS LAWRENCE*

The Situation Prior to The 1952 Amendment

The 1952 Kentucky Legislature wisely amended the Kentucky Real Estate License Law (Chapter 324, Kentucky Revised Statutes). The original act was passed in 1938. Its purpose was wholesome but was wholly inadequate insofar as the protection of the public was concerned. In substance, its provisions required all real estate brokers and salesmen to register with the Kentucky State Real Estate Commission and to post a \$1,000.00 bond to insure that their activities would be legal. Eleven grounds for revocation or suspension of licenses were also provided for in the original act.

Unfortunately, under the old statute, a known crook or a person who had been convicted of a crime involving moral turpitude, could obtain a license merely by posting a \$1,000.00 bond and proceed to mulct the public of thousands of dollars. By the same token an ignoramus, merely by posting the \$1,000.00 bond, could obtain a license, and, even though he might be honest, could cause a great deal of dissatisfaction, litigation and other inconveniences to the public because of his lack of knowledge in handling a real estate transaction. In other words, the public was being cheated because the ignorant broker was being paid a fee for his services which were practically worthless because of his lack of training and "know-how".

As an illustration of this situation, for the two year period ending June 30, 1952, more than \$20,000.00 which was being held illegally by nefarious brokers was caused to be refunded to the public by the Kentucky State Real Estate Commission. It is nothing unusual to find that the life savings of a poor family have been trifled with and placed in jeopardy because of a smooth talking real estate agent whose main concern is to "feather his nest." During that same period the Kentucky State Real Estate Com-

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mission revoked and suspended many licenses and made demands upon surety companies to reimburse the people who had suffered at the hands of these fly-by-night operators. Never has a surety company refused such a request from the State Commission because the demand is never made upon the surety company without first holding a formal administrative hearing on the charges, to which hearing the surety company is requested to send a representative and participate in the questioning.

The New Amendment

Realizing the foregoing situation, the 1952 General Assembly amended the old law in five material respects, as follows:

- (1) It eliminated the provisions of the Statutes which permitted an individual to make "casual sales" without being licensed. Obviously such a provision was an exceedingly weak link in connection with the enforcement of the old law.
- (2) It requires the Commission to issue licenses only to persons who are trustworthy and competent to transact the business of a real estate broker or salesman in such a manner as to safeguard the interest of the public. This provision, of course, eliminates the crook and the incompetent.
- (3) In addition to the latter provision, the amendment requires that each applicant must pass a written examination conducted by the Commission to establish his competency and trustworthiness.
- (4) Every broker must maintain a definite place of business in this State and shall erect and maintain a sign in a conspicuous place on the premises at or near the outside entrance to his principal office and all branch offices. The sign shall indicate that he is a real estate broker and his name shall be clearly shown thereon in letters of not less than 2 inches in height.
- (5) The amount of the bond was increased from \$1,000.00 to \$3,000.00 and only a commercial surety company doing business in Kentucky can act as surety on such bond.
- (6) Although there were many requests for the law to include fourth-class cities and also the entire state, the legislature deemed it advisable not to extend the law

so as to include any territory other than first, second and third-class cities and a radius within five miles of the corporate limits thereof.

Results of The New Amendment

The new amendment became effective June 19, 1952. The Commission had inquiries from approximately 400 individuals from that date to September 12, 1952, for the purpose of determining the qualifications necessary in order to go into the real estate business. Upon ascertaining that a written examination, thorough moral background investigation and a \$3,000.00 bond were required, all but 48 of such individuals decided that they were not desirous of entering the profession. Obviously there were many highly incompetent people in such group. On September 12, 1952, the written examination was given by the Commission to 48 individuals at Louisville, Kentucky. Another written examination will be given at Covington, Kentucky, on December 12, 1952; at Louisville, Kentucky, on March 6, 1953; and at Owensboro, Kentucky, on June 5, 1953. Previously the licenses were issued in wholesale lots and the old law afforded no selectivity whatsoever.

Every state bordering Kentucky has this type of law in order to give maximum protection to the public. Forty-two of our states, Hawaii, and many provinces in Canada likewise have similar laws. Like the Security Exchange Commission with stock brokers, the Kentucky State Real Estate Commission performs the same services with reference to the real estate agents. The Courts of last resort in practically all of the states with similar laws and the Supreme Court of the United States have held uniformly, especially in the past 25 years, that the real estate agent is a confidant of the public; that he holds a position of extreme trust, that his position in the community is becoming increasingly more important all the time, and that under the police power of a state it is within the purview of a legislature to require the agents to conform to sound entrance qualifications; also to be governed by restrictions which would lead to revocation of their licenses if they did not conform to such provisions of the law.

¹ 308 Ky. 288, 214 S.W. 2d. 396.

In 1948 in the case of *Shelton v. McCarroll*,¹ our Kentucky Court of Appeals in upholding the constitutionality of such an act, said as follows:

There is much buying and selling of property through real estate brokers and agents and it certainly concerns public morals and welfare to have such brokers and agents identified and regulated by the State and required to execute a bond that they will conform to sound business practices, the violation of which will cause a revocation of their license. The terms of the Act cannot be said to be unduly oppressive upon those engaged as real estate brokers and are reasonably necessary to accomplish the purposes of the Act. An act very similar to the one now before us was held to be constitutional under the police power in *Hoblitzel v. Jenkins*, 204 Ky. 122, 263 S.W. 764, with the exception of that provision which did not grant a sufficient right of appeal to the courts.

The act further provides that the Commission is self-supporting from the fees charged by members entering the profession and from renewals of their licenses. Thus the public is given protection at the expense of the profession itself. Many lawyers have filed complaints with the Commission alleging violation of Section 324.160 (there are eleven grounds for revocation of licenses) and as a result thereof, relief has been given in dozens and dozens of cases through the medium of the surety on the bond of the particular individual. Likewise, many poor people, without the benefit of counsel, applied for and obtained relief at no cost whatsoever through the same medium. An affidavit from the aggrieved party which briefly recites the facts indicating that a violation of the license law has been committed, is sufficient for the Commission to commence an investigation looking forward to the holding of a formal hearing if the facts justify. The Commission has the rights of similar administrative groups, including the right to issue subpoenas.

Conclusion

The recent amendment will enable the Commission to police even better than ever before, the real state profession, and those who are seeking to enter it. It invites complaints from anyone

who has facts indicating that the real estate license law has been violated. The Commission knows that, as a whole, the real estate profession is an honorable and worthy one. It desires to give protection to the public from those few who, as in most any profession, are seeking to fleece the public in deviation of the existing laws and ethics.